

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA

SCANNED

v.

U.S. DISTRICT COURT
DISTRICT OF MASS.

Criminal No. 05-10017-MLW

ELMER TEJADA-PORTILLO

DATE: 1-28-05

BY: *[Signature]*

**GOVERNMENT'S MOTION TO AMEND INDICTMENT
FOR MINISTERIAL ERROR**

The United States of America, by United States Attorney Michael J. Sullivan and Assistant United States Attorney Nadine Pellegrini, hereby moves to amend the above-numbered indictment to substitute the correct penalty section at the close of the indictment. See United States v. Dhinsa, 243 F.3d 635, 667 (2d Cir. 2001) (indictment may be amended without resubmission to grand jury to effect ministerial change, such as to correct misnomer or typographical errors). As reasons therefore, the undersigned states the following:

1. The penalty section listed at the close of the indictment is currently listed as 8 U.S.C. §1326(b)(3), which provides for a ten year maximum penalty. This section is included solely to provide notice of the maximum penalty. The inclusion of this subsection is the result of an editing mistake. The correct penalty section is actually 8 U.S.C. §1326(b)(1) which provides for a ten year maximum penalty.

3. The grand jury that returned the above-captioned indictment heard testimony identifying Elmer Tejada-Portillo as the subject of the indictment. It did not hear testimony regarding the potential penalties.


4. A corrected copy of the indictment is appended hereto.

WHEREFORE, the government respectfully requests that the instant motion to amend the indictment be allowed and that the appended corrected version of the indictment be substituted for the original indictment.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:

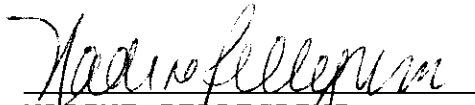


NADINE PELLEGRINI
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon William White, Esq., counsel for the defendant, in hand, a copy of the Government's Motion to Amend the Indictment for Ministerial Error.

This 27th day of January, 2005.



NADINE PELLEGRINI
Assistant U.S. Attorney